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IN THE

Supreme Court of the United States.

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No. 50. IN EQUITY.

Beryl F. Carroll, Auditor of State of the State of Iowa,
Appellant,

vs.

The Greenwich Insurance Company of New York
et al., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

ADDITIONAL STATEMENT FOR APPELLEES.

JOHN G. JOHNSON,
GEORGE H. CARR,
JAMES C. DAVIS,
Attorneys for Appellees.

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

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Beryl F. Carroll, Auditor of the State of Iowa, Appellant,

vs.

The Greenwich Insurance Company of New York et al., *Appellees.*

October Term, 1905.

ADDITIONAL STATEMENT FOR APPELLEES.

To enable the court to appreciate that the Legislature of the State of Iowa did not in any wise intend that Sections 1754 to 1757 of the Code of Iowa, the sections of the law in controversy, should be held as conditions under which foreign insurance companies could do business in Iowa, we desire to submit the following synopsis of the insurance law of that State.

1. The entire statute law of Iowa, governing insurance other than life, has been codified, and is found in Chapter 4, of Title 9, covering pages 609 to 630, inclusive, and Sections 1684 to 1758, inclusive, of the Code of 1897. The title of the chapter is "Of Insurance Other Than Life." There have been two slight amendments of the law since the Code of 1897 took effect, to wit, Chapter 73

of the Acts of the 29th G. A., which refers to the character of notice and proofs of loss in the matter of personal property, and Chapters 56, 57, and 58 of the laws of the 30th G. A. These chapters refer respectively to the examination of insurance companies, licensing of insurance agents, and consolidation or re-insurance of the risks of insurance companies, and apply with equal force to all companies, whether foreign or domestic.

2. The only statutes of the State of Iowa which apply exclusively to foreign insurance companies are the statutes which provide the terms upon which foreign companies may do business in Iowa, and the statute authorizing the revocation by the Auditor of the certificate of a foreign company, authorizing such foreign company to do business in Iowa. Such statutes are as follows:—

"SEC. 1721. *Foreign companies—capital required.*—"No insurance company, association or partnership "incorporated, associated or organized under or by "the laws of any other state or any foreign govern-"ment, for the purposes specified in this chapter, "shall directly or indirectly take risks or transact "any business of insurance in the state, unless pos-"sessed of two hundred thousand dollars of actual "paid up capital, exclusive of any assets deposited "in other states and territories for the special benefit "or security of the insured therein; but the pro-"visions of this section shall not apply to mutual "insurance companies or associations specifically or-"ganized for the purpose of and insuring a single "class of property only; and companies organized "to insure plate glass exclusively are not required "to have a greater capital than one hundred thou-"sand dollars; but such companies organized to "insure against personal injury, disablement or "death resulting from traveling or general accidents "by land or water exclusively, having an actual "paid up capital of one hundred thousand dollars "and one hundred thousand dollars cash surplus "safely invested, exclusive of any assets deposited "in other states and territories for the special benefit

"or security of the insured therein, shall be deemed "to be possessed of two hundred thousand dollars "actual paid up capital within the meaning of this "section.

"SEC. 1722. *Service of process—statement.*—Any "foreign company desiring to transact the business "of insurance under this chapter, by an agent or "agents in the state, shall file with the auditor of "state a written instrument, duly signed and sealed, "authorizing such auditor to acknowledge service of "notice or process for and in behalf of such com- "pany in this state, and consenting that service of "notice or process may be made upon the auditor "of state, and when so made shall be taken and "held as valid as if served upon the company ac- "cording to the laws of this or any other state, and "waiving all claim or right or error by reason of "such acknowledgment of service. Such notice or "process with a copy thereof may be mailed to the "auditor of state at Des Moines, Iowa, in a regis- "tered letter addressed to him by his official title, "and he shall immediately upon its receipt acknowl- "edge service thereon on behalf of the defendant "foreign insurance company by writing thereon, "giving the date thereof, and shall immediately "return such notice or process in a registered letter "to the clerk of the court in which the suit is pend- "ing, addressed to him by his official title, and shall "also forthwith mail such copy, with a copy of his "acknowledgment of service written thereon, in a "registered letter addressed to the person or cor- "poration who shall be named or designated by "such company in such written instrument. And "such company shall also file with the auditor a "certified copy of its charter or deed of settlement, "together with a statement under oath of the presi- "dent or vice-president or other chief officer and "the secretary of the company for which they may "act, stating the name of the company, the place "where located, the amount of its capital, with a "detailed statement of the facts and items required "from companies organized under the laws of this "state, and a copy of the last annual report, if any,

"made under any law of the state, by which such "company was incorporated; and no agent shall be "allowed to transact business for any company "whose capital is impaired by liabilities as specified "in this chapter to the extent of twenty per cent. "thereof, while such deficiency shall continue.

"SEC. 1723. *Foreign mutual companies.*—Any "foreign mutual company possessed of cash assets "safely invested, amounting to at least two hundred "thousand dollars over and above all its liabilities, "including the reserve for reinsurance required by "the laws of the state, shall be held to be possessed "of two hundred thousand dollars of actual paid up "capital, within the meaning of the two preceding "sections, and may be authorized to take risks and "transact the business of insurance in the state on "complying with the provisions of law applicable "to them and relating to foreign insurance com-"panies.

"SEC. 1724. *Certificate.*—When any foreign com-"pany has fully complied with the requirements of "law and become entitled to do business, the auditor "of state shall issue to such company a certificate "of that fact, which certificate shall be renewed "annually on the first day of March, if the auditor "is satisfied that the capital, securities and invest-"ments of such company remain unimpaired, and "the company has complied with the provisions of "law applicable thereto."

The court will note that the only requirements of foreign companies, in order that they may do business in the State of Iowa, as set out in the foregoing statutes, are that the companies shall have necessary capital, make the proper statement as to solvency, file a written instrument authorizing the Auditor to accept service of process, and furnish certain detailed information required by the statutes. There is no suggestion in the conditions under which foreign companies shall transact business in Iowa that, as distinguished from domestic companies, they must comply with all laws of the State. The only provision of the law which authorizes the revocation of the

certificate of a foreign company is found in Section 1735 of the Code, which is as follows:—

"SEC. 1735. *Revocation of certificate of foreign "company.*—The auditor of state shall be authorized "to examine into the condition and affairs of any "insurance company, as provided for in this chapter, "doing business in this state, not organized under "its laws, or cause such examination to be made "by some person or persons appointed by him hav- "ing no interest in any insurance company; and "when it shall appear to his satisfaction that the "affairs of any such company are in an unsound "condition, he shall revoke the certificates granted "in its behalf, and cause a notification thereof to "be published in some newspaper of general circu- "lation, published at the seat of government, and "no agent or agents of such company after such "notice shall issue policies or renew any previously "issued."

The condition of such revocation is "when it shall ap- "pear to his (the Auditor's) satisfaction that the affairs "of any such company are in unsound condition," and this is the only condition under which the certificate of a foreign company, as distinguished from an insurance company, can be revoked.

3. All other provisions as to insurance companies apply by their terms equally to foreign and domestic companies, the usual prefatory sentence in each of the sections being in the following language: "Every insurance "company of the character provided for in this chapter, "doing business in this State, organized under the laws "of this or any other State or country," &c., and in the multitude of provisions which apply equally to both classes of companies we find Section 1709-1710, describing the kinds of insurance and limitation of risk; Section 1714, requiring annual statements from all companies, foreign and domestic, which statements shall be made to the Auditor; Section 1737, requiring every insurance com-

pany of the character provided in this chapter, doing business in the State, organized under the laws of this or any other State or country, to publish annually in newspapers of general circulation a copy of the certificate from the Auditor that the said company has complied with the requirements of the law—it will be noted that the domestic companies, in common with the foreign companies, are required to obtain this certificate annually; Section 1738, prohibiting false statements as to the condition of the company, which applies equally to foreign and domestic companies, and Sections 1739 and 1740, providing the character of the statement to be made and penalty for false statements. Then follow the sections in controversy, being 1754 to 1757, applying to all companies doing business in the State.

We submit that an examination of the entire chapter of the statutes applying to insurance in force in the State of Iowa demonstrates, as to the intention of the Legislature of that State and the policy of the State, that, after foreign companies have been admitted, having made a proper showing of solvency, filed their articles with the Auditor, and agreed that service in the institution of suits may be made upon or accepted by the Auditor (the provision as to the revocation of the certificate of a foreign company being limited solely to the ascertainment of whether or not the company is in an unsound condition), from the time of the admission of foreign companies to do business in the State they are treated by the Legislature upon exactly the same terms as are domestic companies.

The fact that specific provision is made as to the terms upon which foreign insurance companies may do business in Iowa excludes the thought that this class of companies is governed by the general law applying to all foreign corporations, and limits the right to revoke the certificate of foreign companies to do business to the specific condition contained in the law applying to this class of companies.

In this connection, we desire to call the attention of the court a little more in detail to the case of Fidelity Mutual

Life Association *vs.* Mettler, 185 U. S., 308, where this court concluded, after a review of the Texas statutes, that the provisions under consideration in that case were made conditions under which domestic and foreign insurance companies were permitted to do business in Texas, the court stating its conclusion in the following language:—

> "It is apparent from the various sections of the "title relating to insurance, to which we have before "referred, that this particular liability amounted to "one of the conditions on which life and health in- "surance companies were permitted to do business "in Texas, and the power of the State in the matter "of the imposition of conditions on its own and "foreign corporations has been repeatedly recog- "nized by this court."

The court, however, did not base its conclusion in this case upon this ground, but subsequently in the opinion determined that the law of Texas was not an arbitrary classification, but rested upon sufficient reason.

In this opinion the case of Cargill *vs.* Minnesota, 180 U. S., 452, was not referred to. In the Cargill case the State of Minnesota sought to prevent the W. W. Cargill Company, a corporation of Wisconsin, from operating an elevator in the State of Minnesota without first applying to the Railroad and Warehouse Commission for a license, under the provisions of the Minnesota law. The Minnesota law contained the following express provision:—

> "*Such license shall confer upon the licensee full* "*authority to operate such warehouse or elevator in* "*accordance with the laws of this State and the rules* "*and regulations prescribed by said Commission, and* "*every person, company or corporation receiving such* "*license shall be held to have accepted the provisions* "*of this act, and thereby to have agreed to comply* "*with same.*"

This court, in a unanimous opinion, determined the effect of the acceptance of a license by the company under

the provisions of the law above quoted, and determined that the acceptance of such a license would not prevent the licensee from questioning the constitutionality of any of the laws or regulations made by the authorities of the State, the court saying, at page 468:—

> "The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or with any regulations prescribed by the state Railroad and Warehouse Commission that are repugnant to the Constitution of the United States."

This decision, wherein the right of a foreign corporation to question the constitutionality of the law of a State under which it has the right to do business is affirmed, clearly sustains the right of appellees to question the constitutionality of the law under discussion.

JOHN G. JOHNSON,
GEORGE H. CARR,
JAMES C. DAVIS,
Attorneys for Appellees.